

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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UNITED STATES OF AMERICAN and
the STATE OF CALIFORNIA ex rel
MIKE STIERLI,

NO. CIV. S 04-1955 MCE PAN

Relator Plaintiff,

v.

ORDER

SHASTA SERVICES INC. dba
TIMBERWORKS; and DOES 1
through 50, inclusive,

Qui Tam Defendants.

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This case arises from a construction contract between the State of California Department of Transportation ("CALTRANS") and Defendant Shasta Services Inc. dba Timberworks ("Timberworks") for work on a weighing facility on Interstate 5 near Mt. Shasta, California. That contract contained provisions which required either the participation of Disabled Business Enterprises ("DBEs"), as defined in Title 49, Code of Federal Regulations, Part 26, in the project or a demonstration of good faith efforts

1 aimed at such participation. The contract was ultimately awarded
2 to Timberworks after it submitted the low bid and presented
3 evidence to CALTRANS as to its inability to secure DBE
4 participation. The second lowest bidder, MDS Construction,
5 through its owner, Mike Stierli, thereafter challenged the award
6 of that contract, alleging that Timberworks made material
7 misrepresentations in its documentation as to DBE participation.
8 The contract between CALTRANS to Timberworks was nonetheless
9 finalized after CALTRANS determined that DBE goals had been met.

10 MDS then proceeded to file a protest with the United States
11 Department of Transportation ("USDOT") on grounds that the
12 project in question received federally apportioned funds
13 contingent on DBE participation. The USDOT ultimately determined
14 that the contract was ineligible for federal aid participation
15 because of inadequate documentation as to DBE compliance.
16 CALTRANS maintains that it elected to proceed with the project
17 without obtaining federal aid.

18 Mike Stierli instituted the present action on behalf of the
19 United States¹ pursuant to the Federal False Claims Act, 31
20 U.S.C. § 3729,² on grounds that federal aid monies were
21 nonetheless utilized. Because he asserts that any such use of
22 federal funds was improper, Mr. Stierli, as a *qui tam* relator

23 ¹The first paragraph of Plaintiff's complaint makes it clear
24 that "this is an action to recover damages and civil penalties on
25 behalf of the United States of America arising out of false
claims presented by defendants..." (Complaint, ¶ 1)

26 ²Additional *qui tam* claims under the California False Claims
27 Act, California Government Code § 12651(a) et seq., and the
28 Federal Racketeering Influence and Corrupt Organizations Act
("RICO"), 18 U.S.C. § 1961 et seq., are also asserted on behalf
of the United States.

1 pursuant to Section 3730(b), filed his lawsuit on the
2 government's behalf to recoup monies improperly paid to
3 Timberlake under its contract with CALTRANS.

4 The contract between CALTRANS and Timberworks contained an
5 arbitration provision, pursuant to which the parties to that
6 contract agreed to submit to arbitration all claims arising under
7 or related to the contract. Timberworks has now filed a motion
8 to compel arbitration, and to stay the present action pending
9 such arbitration. Timberworks contends that the arbitration
10 clause contained in its contract with CALTRANS applies to Mr.
11 Stierli's *qui tam* claim on behalf of the United States despite
12 the fact that neither Stierli nor the United States was a party
13 to that contract.

14 Timberworks properly points out that the Federal Arbitration
15 Act ("FAA"), 9 U.S.C. § 3, provides that if a suit is brought in
16 federal court upon an issue referable to arbitration under a
17 written agreement, the court may stay such action pending
18 arbitration. In addition, Section 4 of the FAA authorizes the
19 court to compel arbitration in accordance with the terms of such
20 agreement.

21 It is nonetheless axiomatic that a party cannot ordinarily
22 be required to submit to arbitration a dispute which it has not
23 agreed to arbitrate. United Steelworkers v. Warrior & Gulf
24 Navigation Co., 363 U.S. 574, 582 (1960). "Ultimately, the issue
25 of arbitrability 'is to be determined by the contract entered
26 into by the parties.'" Mediterranean Enterprises, Inc. v.
27 Ssangyong Corp., 708 F.2d 1458, 1463 (9th Cir. 1983).

28 Mike Stierli, the relator plaintiff in this action, was

1 undisputedly not a party to the contract between CALTRANS and
2 Timberworks which contained the arbitration provision at issue.
3 It is only through the United States, which remains the real
4 party in interest in this case even though it has elected not to
5 intervene,³ that Timberworks argues an obligation to arbitrate is
6 present.

7 The contract at issue, however, is between CALTRANS and
8 Timberworks, only, and the operative portions (attached as
9 Exhibit "A" to the Declaration of Harold J. Knight) contain no
10 reference to the federal government aside from a federal aid
11 agreement number as identified in the Instructions to Bidders and
12 General Conditions for Building Construction (see Plaintiff's
13 Disclosure of Material Information and Evidence, p. 0007), which
14 is incorporated by reference. While the Instructions to Bidders
15 document does set forth DBE requirements, they do not
16 specifically state that federal project aid is contingent on
17 meeting those requirements, indicating only that "the Department
18 (CALTRANS) has established (a certain) goal for Disadvantaged
19 Business Enterprise (DBE) participation in this project." Id. at
20 p. 0017.

21 Any agreement by the United States to provide federal aid
22 for the project at issue in this case would appear to be the
23 subject of a separate agreement between CALTRANS and the United
24 States. That agreement, or the terms thereof, cannot be
25 ascertained through reference to the CALTRANS/Timberworks
26 contract except on the most inferential of levels. Nonetheless,

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28 ³See United States v. Health Possibilities, P.S.C., 207 F.3d
335, 341 (6th Cir. 2000).

1 even though the United States was not a signatory to the contract
2 and has formally objected to submission of this lawsuit to
3 arbitration, Timberworks argues that it, and consequently Mike
4 Stierli acting on behalf of the United States in this *qui tam*
5 proceeding, should nonetheless be required to arbitrate. To
6 support that proposition, Timberworks contends "the intertwined
7 exception (to the general rule that an agreement to arbitrate
8 does not apply to a non-party) allows this court to compel
9 arbitration." (Reply to the United States' Opposition, 2:26-27).

10 Examination of cases applying the so called "intertwined
11 claims" exception indicate that they primarily were decided under
12 circumstances where there was a business relationship between the
13 party to the arbitration contract and the non-signatory making it
14 disingenuous for the non-signatory to argue it was not bound by
15 the terms agreed to by the related party. See, e.g., Sunkist
16 Soft Drinks, Inc. v. Sunkist Growers, Inc., 10 F.3d 753 (11th
17 Cir. 1993) (non-signatory licensor could not refuse to arbitrate
18 intertwined claims involving licensee parent); Grigson v.
19 Creative Artists Agency, LLC, 210 F.3d 524 (5th Cir. 2000)
20 (claims by non-signatory actor and his agent intertwined with
21 movie distribution agreement containing arbitration clause).

22 The present case is distinguishable from cases recognizing
23 the "intertwined claims" exception. Any agreement between the
24 United States and CALTRANS to provide construction funding is
25 separate and distinct from CALTRANS' contract to actually
26 complete the construction itself, which contained the arbitration
27 provision now asserted by Timberworks as binding on the United
28 States.

1 While Timberworks also argues that the United States should
2 be equitably estopped from arguing it was not a party to the
3 contract, that contention has force only where the non-signatory
4 receives a "direct benefit" from a contract containing an
5 arbitration clause. *See American Bureau of Shipping v. Tencara*
6 *Shipyard S.P.A.*, 170 F.3d 349, 353 (2d Cir. 1999). Although
7 Timberworks contends that the DBE provisions upon which this
8 lawsuit is founded stem from "provisions inserted for the benefit
9 of the Federal government" (Reply to United States' Opposition,
10 3: 2-3), it stretches credulity to argue that the United States
11 directly benefits from provisions which, at most, are a
12 prerequisite to the State of California receiving benefits in the
13 form of federal funding.

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1 In sum, Timberworks has not established any exception to the
2 general rule that a non-signatory like the United States herein
3 cannot be compelled to arbitrate claims pursuant to an agreement
4 to which it was not a party. Because the United States is the
5 real party in interest in this *qui tam* proceeding, neither it nor
6 Mike Stierli, who is pursuing the claim on the government's
7 behalf, can be compelled to arbitrate the claims asserted through
8 this lawsuit. Timberworks' motion is accordingly DENIED.⁴

IT IS SO ORDERED.

DATED: September 20, 2005


MORRISON C. ENGLAND, JR
UNITED STATES DISTRICT JUDGE

⁴Because oral argument would not be of material assistance, this matter was deemed suitable for decision without oral argument. E.D. Local Rule 78-230(h).